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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

No. 93788-5

Nos. 336221 and 336239

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

VICKI HORTON, Spokane County Assessor, ROB CHASE, Spokane County Treasurer

and

THE STATE OF WASHINGTON, by and through the Department of Revenue,

Appellants,

v.

CITY OF SPOKANE, a municipal corporation,

Respondent.

RESPONDENT CITY OF SPOKANE'S CONSOLIDATED RESPONSE TO APPELLANTS' SUPPLEMENTAL BRIEFS

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I. INTRODUCTION

The Court has directed the parties to submit supplemental briefing on the issue of whether the Washington Supreme Court's decision in *Town of Tekoa v. Reilly* compels a ruling in the City's favor or whether the case has been overruled *sub silentio*. Respondent City of Spokane ("City") respectfully submits the following response.

One of the core issues in this appeal is whether local exemptions to local property taxes violate the "uniformity" mandate in Article VII, § 9 of the Washington Constitution. Appellants Department of Revenue ("DOR") and Spokane County ("County") maintain that Article VII, § 9 commands perfect uniformity in matters of local taxation—and that, as a result, local exemptions are categorically unconstitutional.

As the Court has aptly recognized, however, *Tekoa* forecloses any argument that Article VII, § 9 commands perfect uniformity. Although uniformity is the highest and most important constitutional requirement, "absolute equality is not to be expected." *Tekoa*, 47 Wash. at 208. *Tekoa* holds that Article VII, § 9 does not categorically prohibit exemptions that render a local tax non-uniform. *Id.* at 206-08. When a local exemption results in a non-uniform local tax, the Court must decide whether the tax is uniform *enough* to withstand constitutional scrutiny.

Tekoa also answers another key question: whether Article VII, § 9 prohibits the Legislature from delegating its exemption authority to local taxing jurisdictions. *Tekoa* stands for the proposition that cities may grant exemptions to local taxes when the Legislature has authorized them to do so. Thus, contrary to Appellants' assertions—and as further supported by a concession made by DOR at oral argument—Article VII, § 9 does not prohibit the Legislature from delegating its exemption authority.

Tekoa remains good law. There are no decisions that "directly contradict" its holding that perfect uniformity is not required. Nor have Appellants carried their burden to "clearly demonstrate" that this rule is "incorrect and harmful."

The City's Ordinance survives any level of constitutional scrutiny because the exemption it grants to retired persons and disabled veterans is enshrined in the Constitution itself. The City simply took the Article VII, § 10 exemption and implemented it at the local level pursuant to its grant of "all powers of taxation for local purposes" in RCW 35A.11.020. An exemption written into the Constitution itself cannot be unconstitutional for lack of uniformity. Accordingly, the decision below should be affirmed.

II. ARGUMENT

A. The Court should affirm in light of DOR's concession that the Legislature could have granted the subject exemption directly.

The Court has asked the parties to brief whether *Town of Tekoa v. Reilly*, 47 Wash. 202 (1907), compels a ruling in the City's favor. As discussed in the sections that follow, the answer is yes. As a threshold matter, however, the appeal can be resolved without any examination of *Tekoa* based upon DOR's concession that an identical local exemption, *if passed by the Legislature*, would not violate the Constitution.

At oral argument, the Court asked counsel for DOR whether the Legislature could have granted the same local exemption created by the City's Ordinance without running afoul of the constitutional uniformity requirement. Counsel gave an emphatic answer: "Absolutely." The full question and answer was as follows:

> COURT: Couldn't the State exempt *all* property owned by seniors who fit the qualifications from any assessment, city, state, county?
>
> MR. KRAWCZYK: Absolutely, and they can do that with, and they've done that with blood banks, they've done that with non-profits. So it's not a partial exemption in that instance, it's a full exemption.[1]

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[1] Audio Recording of June 10, 2016 Oral Argument (30:13 – 30:33), available at: https://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fa=appellateDockets.showOralArgAudioList&courtId=a03&docketDate=20160610

The City agrees with this answer. Article VII, § 10 allows the Legislature to exempt retired persons and disabled veterans from property taxes, notwithstanding constitutional uniformity requirements. This authority applies across the board at the state, county and local levels.

The City's position is that the Legislature delegated its authority to grant the exemption authorized by Article VII, § 10 to the City. It did so by granting the City "all powers of taxation for local purposes" in RCW 35A.11.020. Appellants disagree with this interpretation of the statute, arguing that "all powers of taxation" means only the power to assess and collect taxes, to the exclusion of the power to exempt. The Court will ultimately have to decide this issue.

What is no longer in dispute, however, is the threshold question of whether the Legislature *could have* delegated its exemption power. DOR has stated in no uncertain terms that the City's exemption would not have violated the uniformity mandate had it been adopted by the Legislature. The result can be no different here. Uniformity is a *uniform* concept: a tax is either uniform or it is not. The result cannot differ based upon which legislative body put the tax on the books.

The argument that Article VII, § 9 prohibited the Legislature from delegating its exemption authority to the City makes no sense. Whether

enacted by the Legislature or the City, the exemption referenced in the Ordinance results in the *very same tax*. The uniformity of the resulting tax is what matters under Article VII, § 9. It defies logic to argue that an identical tax is uniform when adopted by the Legislature, but not when adopted by the City acting pursuant to a delegation of the Legislature's authority. The Court should therefore hold that Article VII, § 9 does not prohibit the Legislature from delegating its local exemption authority.

B. <u>The Washington Constitution does not forbid local exemptions to local property taxes.</u>

One of the core issues in this appeal is whether the Washington Constitution prohibits municipalities from granting local exemptions to local property taxes. DOR and the County argue that Article VII, § 9 commands perfect uniformity in matters of local taxation—and that, as a result, local exemptions (which can result in non-uniform taxation) are categorically barred. *See, e.g.*, DOR Opening Brief at 23-24 ("Section 9 requires uniformity and expressly limits the powers in the second clause to levying and collection."); County Opening Brief at 18-19 (arguing that Article VII, § 9 precludes cities from granting the senior citizen exemption authorized by Article VII, § 10); DOR Reply Brief at 8-9 (arguing that Article VII, § 9 bars the Legislature from delegating exemption authority to municipalities); County Reply Brief at 16 ("The only circumstance in

which [the] uniformity requirement is waived is for tax exemptions for retired property owners – an exemption that can only be granted by the Legislature").

Tekoa rejects the premise that Article VII, § 9 commands perfect uniformity in matters of local taxation. The plaintiff in *Tekoa* challenged a local street poll tax under Article VII, § 9, arguing that an exemption for females and males under the age of 21 rendered the tax non-uniform. 47 Wash. at 203-04. A mere three years earlier, in *State v. Ide*, 35 Wash. 576 (1904), the Court had invalidated a nearly identical street poll tax on the ground that an exemption for females, males under the age of 21 and over the age of 50, and volunteer firefighters rendered the tax void for lack of uniformity. *Id.* at 203. Thus, the outcome appeared to be a foregone conclusion.

Rather than blindly applying the *Ide* decision, however, the Court took a fresh look at Article VII, § 9. The Court began by noting that the Constitution "was not the beginning of law" for the State of Washington. *Id.* at 206. For decades before the Constitution was adopted, the Court explained, the territorial Legislature had authorized cities to assess local taxes and grant local exemptions under the authority of city charters:

> At the time of [the Constitution's] adoption[,] Washington was an organized territory with a code of laws for the

> government of its people. Section 2863 of the Code of 1881 provided as follows: 'Every male inhabitant of this territory over twenty-one and under fifty years of age must be assessed and annually pay a poll tax of two dollars, except paupers, idiots and insane persons, and all active firemen who have been a member of any fire company in this territory for the period of one year preceding the assessment of taxes'; and nearly, if not all, the municipal charters granted by the territorial Legislature authorized the imposition of a street poll tax **with like exemptions**.

Id. at 206 (emphasis added).

The Court found it particularly significant that cities enjoyed exemption authority under their charters when the Constitution was adopted. Had the framers of the new Constitution intended to deprive cities of that authority, the Court reasoned, they surely would have made their intentions more explicit:

> Are all these charter provisions to be held for naught, simply because the Constitution contains the general altruistic declaration that taxes shall be uniform with respect to persons and property? Had the framers of the Constitution been dissatisfied with the existing order of things, would we not expect to find some more satisfactory evidence of their discontent?

Id. at 206-07.

The Court thus reversed its decision in *Ide* and held that Article VII, § 9 does not require perfect uniformity in matters of local taxation. *Id.* at 208-09. When applying the uniformity clause, the Court explained, "absolute equality is not to be expected." *Id.* at 208 (citation omitted).

Local taxes need not be "as nearly equal as mathematical calculation can make them, but as nearly equal as is consistent with the general welfare of the people, and an equitable distribution of the public burdens." *Id.* Finding that the challenged exemption fell well within the bounds of constitutional uniformity, the Court upheld the tax. *Id.*

The application of *Tekoa* is clear. Contrary to the position advanced by Appellants, Article VII, § 9 does not command absolute uniformity in matters of local taxation. Accordingly, the fact that an exemption renders a local tax non-uniform, standing alone, does not render the tax void for lack of uniformity. *Id.* at 208-09. Uniformity in this context is a question of *degree*. When an exemption renders a local tax mathematically non-uniform, the question is whether the tax is uniform *enough* to withstand constitutional scrutiny.

The obvious question is what level of scrutiny applies. *Tekoa* suggests that an exemption should be sustained if it is "reasonable and proper," sanctioned by usage, and consistent with the Constitution. *See id.* at 209. Appellants equate this to a "rational basis" standard. DOR Supp. Brief at 20-12; County Supp. Brief at 4-5.

The City does not read *Tekoa* to adopt a rational basis standard. Although it rejects an absolute uniformity requirement, the opinion does

not subjugate constitutional uniformity to any deviation that is rationally related to a legitimate government purpose. Rather, the case simply explains that any application of the uniformity requirement must be informed by the history of its adoption in order to avoid absurd and unintended results. *See Tekoa*, 47 Wash. at 205 ("The people of this state in adopting a Constitution did not hope to attain the unattainable. They did not propose to send the tax gatherer to the almshouse, the orphan asylum, or the nursery, nor did they propose to lay a tax on the inmates of these institutions."). Read in proper context, *Tekoa* articulates a narrow exception to the constitutional uniformity standard that comes closer to strict scrutiny than rational basis review.

In any event, the Court need not wrestle with the question of what level of scrutiny applies. The City's Ordinance is constitutional by any measure because the exemption it grants to retired persons and disabled veterans is enshrined in the Constitution itself. *See* Const. Art. VII, § 10. Appellants do not argue that the City expanded the scope of the exemption beyond what Article VII, § 10 allows. Nor do they dispute that the City's Ordinance is modeled after the state senior citizen exemption (RCW 84.36.379, *et seq.*), and limits its application to those entitled to receive the exemption at the state level.

Suffice it to say that an exemption expressly authorized by the Constitution cannot be unconstitutional for lack of uniformity. The City simply took the exemption authorized by Article VII, § 10, and, under the authority delegated to it in RCW 35A.11.020, implemented it at the local level using the state qualifications as a template. There was nothing improper about this action. Accordingly, the Court should affirm.

C. ***Tekoa* supports the delegation of exemption authority by the Legislature to the City.**

Tekoa is significant for another reason: it stands for the proposition that cities may grant and apply exemptions to local taxes to the extent of the authority vested in them by the Legislature. As noted above, *Tekoa* involved a challenge to a local poll tax that exempted women and men under the age of 21. The Town of Tekoa applied the exemption pursuant to a state statute that provided as follows: "The city council of cities of the third and fourth class in this state shall have power to impose on and collect from every male inhabitant of such city over the age of twenty-one years an annual street poll tax not exceeding two dollars[.]" *Tekoa*, 47 Wash. at 203.

Notably, the Court focused on the Town of Tekoa's authority to grant an exemption that resulted in a non-uniform tax. *See id.* at 209 (explaining that the provision invoked by the taxpayer, Article VII, § 9,

"applies only to municipalities"). There was no suggestion that the Legislature had violated Article VII, § 9; the issue was whether the Town of Tekoa, acting under the Legislature's delegation of authority, had run afoul of the uniformity mandate. As noted above, the Court concluded that it had not and upheld the tax. *Id.* at 208-09.

Thus, *Tekoa* eliminates any lingering doubt about the City's authority to grant a local senior citizen exemption. Like the Town of Tekoa, the City received a grant of exemption authority from the Legislature. *See* RCW 35A.11.020 (granting "all powers of taxation for local purposes"). As in *Tekoa*, the issue is whether the City's exercise of that authority comported with Article VII, § 9. The Court should reject Appellants' claims that Article VII, § 9 prohibited the Legislature from granting that authority to the City in the first instance.

D. *Tekoa* cannot be distinguished on the grounds advanced by DOR and the County.

DOR and the County attempt to distinguish *Tekoa* on two main grounds: (1) that the tax at issue was a poll tax rather than a property tax; and (2) the challenged exemption was granted by the Legislature rather than the municipality. Neither argument is persuasive.

Appellants are correct that *Tekoa* involved a challenge to the uniformity of a poll tax rather than a property tax.[2] Contrary to their suggestion, however, neither *Tekoa* nor any subsequent case has endorsed a more relaxed uniformity standard for poll taxes than for property taxes. While it is true that several cases have differentiated between poll taxes and property taxes when applying the uniformity requirement, that is simply a reflection of the fact that uniformity is measured differently for poll taxes than it is for property taxes.[3] The fact that courts have been careful not to conflate the analysis applicable to poll taxes versus property taxes does not mean that poll tax cases can or should be distinguished from property tax cases. Because both types of taxes are subject to the *same* uniformity requirement, general uniformity principles announced in poll tax cases apply equally in the property tax context (and vice versa).

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[2] A poll tax is a tax assessed against a person without regard to income or property ownership, whereas a property tax is a tax assessed against property owned by the taxpayer. Article VII, § 9's uniformity mandate applies to *both* types of taxes. *See* Const. Art. VII, § 9 (providing that "all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to *persons and property* within the jurisdiction") (emphasis added).

[3] The uniformity of a poll tax is measured by the extent to which each person is being assessed the same fixed-rate tax (e.g., $5 per person). This essentially calls for an equal protection analysis. *See* A.E. Harsch & G.A. Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 Wash. L. Rev. 225, 264 (1958). The uniformity of a property tax, by contrast, is measured by (1) the extent to which real property of the same class is being valued in a uniform manner; and (2) the extent to which taxes on assessed value are being levied at a uniform rate. *Belas v. Kiga*, 135 Wn.2d 913, 923 (1998).

The general uniformity principle announced in *Tekoa* is that Article VII, § 9 does not require perfect mathematical uniformity in matters of local taxation. The Court should not ignore this critical principle simply because the tax at issue in *Tekoa* was a poll tax rather than a property tax.

Nor should the Court distinguish *Tekoa* on the ground that the challenged exemption was specifically authorized by state statute. As explained above, the Court's sole focus in *Tekoa* was whether the Town of Tekoa's local tax, implemented at the local level pursuant to a grant of local exemption authority by the Legislature, complied with Article VII, § 9's uniformity mandate. The fact that the subject exemption was specifically referenced in a state statute had no bearing on the Court's analysis. The Court should apply *Tekoa* and affirm the decision below.

E. *Tekoa* has not been overruled *sub silentio.*

When the Washington Supreme Court has expressed a clear rule of law, it "will not—and should not—overrule it sub silentio." *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280 (2009). A party asserting that a case has been overruled *sub silentio* carries a heavy burden. It must first demonstrate that a later decision "directly contradicts the earlier rule of law." *Id.* Principles of stare decisis also require the party to make a

"clear showing" that the earlier-announced rule is "incorrect and harmful." *Id.*

None of the cases cited by DOR or the County come close to clearing this bar. The clear rule of law announced in *Tekoa* is that Article VII, § 9 does not require perfect mathematical uniformity in matters of local taxation. *Tekoa*, 47 Wash. at 208-09. When an exemption applied at the local level results in a non-uniform tax, "absolute equality is not to be expected." *Id.* at 208. Just as the Legislature may authorize exemptions that deviate from a "Procrustean standard of equality," so too may local taxing jurisdictions when acting pursuant to a proper delegation of the Legislature's exemption authority. *Id.*

The main case cited by DOR and the County, *Belas v. Kiga*, 135 Wn.2d 913 (1998) does not "directly contradict" this rule. As a threshold matter, the uniformity problem in *Belas* did not result from an *exemption* to a property tax. *See Belas*, 135 Wn.2d at 935 ("We conclude [that] value averaging is an assessment formula and not a tax exemption."). In fact, the Court expressly rejected an argument asserted by the Department of Revenue that the non-uniform tax could be justified as a proper exercise of exemption power. *See id.* at 929-30 (rejecting DOR's primary contention that value averaging "is an 'exemption' from taxation and hence does not

have to be uniform").[4] The fact that *Belas* did not deal with an exemption precludes a finding that the case implicitly overruled *Tekoa*.

Moreover, *Belas* does not analyze uniformity in absolute terms. Nothing in the opinion suggests a return to "Procrustean standards of equality" in matters of local taxation.[5] To the contrary, as in *Tekoa*, the Court analyzed uniformity as a question of degree. The Court concluded that a "value averaging" referendum, which would have capped annual increases in real property assessments at 15 percent or 25 percent of any increase in the property's market value, violated the uniformity mandate because it would result in owners of property with stagnant market values being taxed at a much higher rate than owners of property with rapidly appreciating market values. *Id.* at 942. For this additional reason, *Belas* cannot be deemed to have implicitly overruled *Tekoa*.

Nor have Appellants made a "clear showing" that the rule in *Tekoa* is "incorrect and harmful." *Lunsford*, 166 Wn.2d at 280. Indeed, neither DOR nor the County has even attempted to make such a showing. The fact of the matter is that the Constitution authorizes a property tax

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[4] The City invites the Court to adopt DOR's reasoning in *Belas* that property tax exemptions are not subject to constitutional uniformity requirements. Unlike in *Belas*, there can be no dispute that the City's Ordinance grants a straightforward exemption.

[5] As explained above, *Tekoa* expressly overruled a prior case, *State v. Ide*, that endorsed a strict mathematical uniformity requirement. Had the Court intended to reverse itself once again in *Belas*, it surely would have done so expressly rather than by silent implication.

exemption for retired persons and disabled veterans. How can granting an exemption written into the Constitution itself be incorrect and harmful?

Appellants would presumably argue (as counsel for DOR stated at oral argument) that applying this rule would allow cities to make "Swiss cheese" out of the tax code. But that concern is unfounded. Again, the exemption at issue is expressly authorized by constitutional amendment. The Court need only decide whether the City's implementation of that exemption was lawful. If a different city adopts a different exemption not authorized by the Constitution in the future—an exemption for everyone owning property on Main Street, for example—the Court can address the legality of such an exemption at that time. The Court should disregard DOR's self-serving arguments about a proliferation of local exemptions and decide the case on the facts presented.

Finally, *Belas* is readily distinguishable because there was no constitutional amendment that expressly authorized a deviation from the uniformity mandate for the tax in question. As the Court explained, the challenged referendum "was not an amendment to the state Constitution and cannot, therefore, abolish or alter the uniformity requirement." *Id.* at 942. In this case, by contrast, Article VII, § 10 expressly authorized the Legislature—and by extension, the City acting under the authority

delegated to it in RCW 35A.11.020—to exempt retired persons and disabled veterans from property taxes. In light of this distinction, the Court should ignore Appellants' reliance on *Belas* entirely.

The remaining cases cited by Appellants fare no better. The bottom line is that none of these decisions—or any other decisions, for that matter—"directly contradict" the holding in *Tekoa*. Subsequent decisions reciting that uniformity is the "highest and most important of all requirements applicable to taxation," *see, e.g.*, *Boeing Co. v. King Cnty.*, 75 Wn.2d 160, 165 (1969), are perfectly compatible with *Tekoa*.

To reiterate, *Tekoa* does not open the floodgates to any deviations from uniformity that are "reasonable and proper" or rationally related to a legitimate government purpose. It simply holds that Article VII, § 9 does not command perfect mathematical uniformity. *Tekoa*, 47 Wash. at 207-09. Where local exemptions to local taxes are concerned, uniformity is a question of degree. *Id.* When challenged under Article VII, § 9, such exemptions must be upheld if they are uniform *enough* to withstand constitutional scrutiny. *Id.*

The City's Ordinance, which grants an exemption enshrined in the Constitution itself, is sufficiently uniform under any level of constitutional

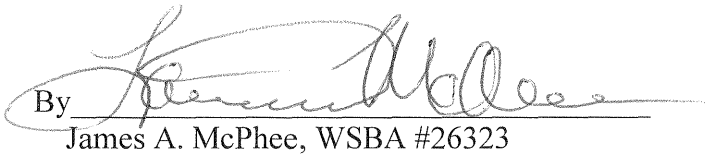
scrutiny that might apply. Accordingly, the Court should affirm the decision below.

IV. CONCLUSION

For the reasons addressed above, the Court should affirm.

RESPECTFULLY SUBMITTED this 23rd day of August, 2016.

WORKLAND & WITHERSPOON, PLLC



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CERTIFICATE OF SERVICE

I, Veronica J. Clayton , hereby certify that a true and correct copy of the foregoing was served by the method indicated below to the following this 23rd day of August 2016.

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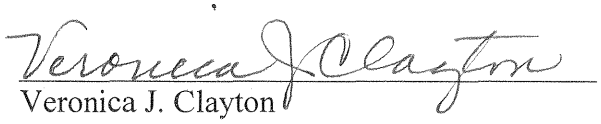

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